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RICHARD W. WIEKING  
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U.S. DISTRICT COURT  
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Attorney for Plaintiff Zianab Ismail

UNITED STATES DISTRICT COURT  
CALIFORNIA NORTHERN DISTRICT  
SAN JOSE DIVISIONAL OFFICE

#5  
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ZIANAB ISMAIL,

Plaintiff,

vs.

County of Santa Clara,  
Department Of Correction

Defendant.

C07 02752

Complaint for Monetary and  
Injunctive Relief for Employment  
Discrimination

(American with Disabilities Act)

DEMAND FOR JURY TRIAL

Plaintiff Zianab Ismail alleges as follows:

BY FAX

JURISDICTION AND VENUE

1. This action is brought pursuant to the American with Disabilities Act of 1990 (ADA), Title 42 United States Code Section 12101 et seq., to obtain relief for Plaintiff Zianab Ismail for alleged disability discrimination in employment by Defendant County of Santa Clara Department of Correction.

2. Jurisdiction of the subject matter of this action is established in this court by the ADA, Title 42 United States Code Section 12117(a), which incorporates the jurisdiction provisions in Title VII of the Civil Rights Act of 1964, Title 42, United States Code Section 20000e-5(f)(3). This is the proper venue for this action under Title 42 United

1 States Code Sections 200003-5(f)(3) and 12117(a), in that the discriminatory  
2 employment practice alleged herein was committed within this court's judicial district.

3 FACTS

4 3. Plaintiff is an adult person and is a resident of the County of Santa Clara, State  
5 of California

6 4. Plaintiff is disabled as defined by the ADA, Title 42 United States Code Section  
7 12102(2), in that she has a record of a physical impairment that substantially limits one  
8 or more of her major life activities; Plaintiff suffered an injury in the workplace in April  
9 2003, causing permanent injury to her back and neck, and rendering her unable to  
10 stand for long periods of time, and lift/pull more than 10 pounds.

11 5. At all times relevant herein, Defendant has been an employer as defined by the  
12 ADA, Title 42, United States Code Section 12111(5)(A) and is subject to the ADA.

13 6. Plaintiff was employed by Defendant as a Correctional Food Service Worker  
14 from October 2000 to the involuntary termination of her employment on September 7,  
15 2004; Plaintiff was on a medical leave of absence from April 2003 until the termination  
16 of her employment.

17 7. Plaintiff provided Defendant notification that she was permitted to return to work  
18 on about April 22, 2003, with limitations including a sit down job with lifting/pulling  
19 limited to less than 10 pounds.

20 8. Plaintiff is a "qualified individual with a disability" within the meaning of Title 42  
21 United States Code Section 12111(8) because she can, with reasonable  
22 accommodation, perform the essential functions of the job that she held in the employ of  
23 Defendant.

24 9. From April 22, 2003 through the termination of Plaintiff's employment on May 7,  
25 2004, Plaintiff provided Defendant notices indicating she was permitted to return to work  
26 with limitations including a sit down job with lifting/pulling limited to less than 10 pounds,  
27 and Defendant refused to engage in an interactive process to determine whether  
28 reasonable accommodation could be made and refused to provide reasonable  
29 accommodation to Plaintiff.  
30

1 10. On May 7, 2004, Defendant terminated Plaintiff's employment because she was  
2 not able to return to her job without limitations.

3 11. Since April 22, 2003, Plaintiff could have performed the essential functions of  
4 her job with reasonable accommodation.

5 12. Since April 22, 2003, Plaintiff could have performed other available jobs within  
6 the County of Santa Clara Department of Corrections.

7 13. Defendant's refusal to engage in an interactive process to determine whether  
8 reasonable accommodation could be made, refusal to provide reasonable  
9 accommodation to Plaintiff, and termination of Plaintiff's employment because she was  
10 not able to return to work without limitations is in violation of Title 42 United States Code  
11 Section 12112(a).

12 14. Defendant intentionally discriminated against Plaintiff because of her disability  
13 as described herein by refusing to engage in an interactive process to determine  
14 whether reasonable accommodation could be made, refusing to provide reasonable  
15 accommodation to Plaintiff, and terminating Plaintiff's employment because she was not  
16 able to return to work without limitations.

17 15. By this action, Plaintiff seeks the following relief, pursuant to Title 42 of the  
18 United States Code Section 12117(a), which incorporates the remedies set forth in Title  
19 VII of the Civil Rights Act of 1964, Title 42 United States Code Section 200003-5(g) and  
20 (k), for the discriminatory treatment of Plaintiff in violation of the ADA: Monetary relief,  
21 including back pay and front pay, attorney's fees and costs of suit, and injunctive relief,  
22 consisting of an order requiring Defendant to hire Plaintiff.

23 16. The discriminatory action of Defendant as set forth herein has caused and will  
24 continue to cause Plaintiff to suffer a loss of earnings, from April 22, 2003 until the date  
25 on which Plaintiff is rehired by Defendant.

26 17. Plaintiff has no adequate remedy at law to secure relief for the loss of  
27 employment opportunity. If this court does not enter an order compelling Defendant to  
28 hire Plaintiff to the job Plaintiff worked, Plaintiff will be irreparably injured in that she has  
29 been unable to obtain employment elsewhere.  
30

1 18. On September 23, 2004, Plaintiff filed a discrimination charge against  
2 Defendant with the Equal Employment Opportunity Commission (EEOC). A copy of that  
3 charge is attached to this complaint, marked Exhibit A, and is incorporated by this  
4 reference as though fully set forth. That charge was timely filed, under the ADA, Title  
5 42 United States Code Section 12117(a) which incorporates the procedures set forth in  
6 Title VII of the Civil Rights Act of 1964, Title 42, United States Code Section 2000e-5(e),  
7 within 300 days of the occurrence of the ADA violation herein alleged.

8 19. On March 1, 2007, the EEOC sent to Plaintiff a notice advising her of her right  
9 to bring this action. This action was timely filed within 90 days after the notice.

10 WHEREFORE, Plaintiff prays for judgment as follows:

- 11 1. For back pay with prejudgment interest, from April 22, 2003 to the date of  
12 judgment herein;  
13 2. For front pay and/or future lost earnings;  
14 3. For injunctive relief, including but not limited to an order compelling Defendant  
15 to hire Plaintiff to the job she worked, and for all other injunctive relief required  
16 to make Plaintiff whole for the losses caused by the violations of Defendant;  
17 4. For costs of suit, including reasonable attorney's fees and expert fees,  
18 pursuant to Title 42 United States Code Section 12117(a), which incorporates  
19 the remedies set forth in Title VII of the Civil Rights Act of 1964, Title 42,  
20 United States Code Section 20003-5(k); and  
21 5. For such other and further relief as the court deems proper.

22  
23 PLAINTIFF DEMANDS A JURY TRIAL  
24

25 Dated: May 25, 2007  
26

27 By:   
28 CARYN N. FABIAN  
29 Attorney for Plaintiff Zianab Ismail  
30

EEOC Form 5 (5/01)

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA  
☒ EEOC

377-2004-01038

**California Department Of Fair Employment & Housing**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Ms. Zianab Ismail

Home Phone No. (Inc) Area Code)

(408) 946-1514

Date of Birth

01-30-1963

Street Address

City, State and ZIP Code

1001 South Main Street, E101, Milpitas, CA 95035

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

COUNTY OF SANTA CLARA/DEPT. OF CORRECTIONS

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(408) 299-2920

Street Address

City, State and ZIP Code

180 W. Hedding Street, San Jose, CA 95110

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☐ RETALIATION ☐ AGE ☒ DISABILITY ☐ OTHER (Specify below)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

04-22-2004

09-10-2004

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I was employed with the above named employer until I was terminated on September 10, 2004. My last job classification was a Food Service Worker.

Respondent was aware of my disability. In or around April 2004, I was able to return to work with restrictions per my physician. However, Respondent refused to accommodate my restrictions and did not allow me to return to work. On September 7, 2004, I received a letter from Respondent indicating that I would be terminated on September 10, 2004.

I believe that I was discriminated against because of my disability, in violation of my rights as protected by the Americans with Disabilities Act of 1990, as amended.

**RECEIVED****SEP 23 2004****EEOC-SJLO**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

Date

Charging Party Signature

000014

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